IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND EIGHT

PRESENT
THE HON'BLE MR JUSTICE D.S.R.VARMA
and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION Nos: 23107 of 2007 and 18093 of 2007

WRIT PETITION No.23107 of 2007

Between:
Elluru Chandra Obul Reddy, S/o. Pedda Dasthagiri Reddy,
R/o. Annavaram Village, Chapada Mandal, Kadapa District.
..... PETITIONER

AND

1 The Joint Collector, Kadapa, Kadapa District.
2 The Deputy Tahsildar (Enforcement), Proddutur, Kadapa District..
3 The Sub-Inspector of Police Rural, Proddutur, Kadapa District..
.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the seizure of 166 bags of rice (each 50 kgs.) belonging to the petitioner made by the respondents under punchanama dt. 24-5-2007 in the premises of bearing No. 3/365 in its Room No. 7, is as illegal, arbitrary, without jurisdiction and contrary to notification issued by the Government of India dt. 15-2-2002 and also provisions of Essential Commodities Act and consequently direct the respondents to release the seized 166 bags of rice by setting aside the order of seizure covered under Punchanamam, dt.24-5-2007 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.S.LAKSHMINARAYANA REDDY

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

WRIT PETITION NO : 18093 of 2007

Between:
Nellisetti Sarveswara Rao, S/o.Raghavaiah,
R/O.Navabpeta, Eluru,
W.G.Dist.

..... PETITIONER

AND

1 The Joint Collector, W.G.District, Eluru,
2 The Assistant Grain Purchasing Officer, Eluru, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate writ order or direction more particularly one in the nature of writ of Mandamus declaring the impugned memo of the 1st respondent in Roc.CS-1/49/2007 dated 19-7-2007 in directing the petitioner to furnish a bank guarantee for Rs.70,256/-duly obtaining in favour of the Joint Collector, W.G.Dt.Eluru, for a period of 3 years validity, from any nationalized bank of Eluru city, for considering release of the stocks seized in the case, as illegal, arbitrary, biased unconstitutional, against the principles of natural justice, violative of the provisions of the Essential Commodities Act and Control orders of the Government of Andhra Pradesh and consequently direct the respondent No 2 to release the seized stocks of 70 quintals of rice in 142 bags of the petitioner with out insisting upon the bank guarantee and to pass such other order or orders which are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: SMT.D.LALITHA PRASAD

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court made the following :

WRIT PETITION NO : 18093 of 2007

Between:
Sri Nellisetti Sarveswara Rao, S/o.Raghavaiah,
R/O.Navabpeta, Eluru,
W.G.Dist.

..... PETITIONER

AND

1 The Joint Collector, W.G.District, Eluru,
2 The Assistant Grain Purchasing Officer, Eluru, West Godavari District.

.....RESPONDENT(S)

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Counsel for the Petitioner:SMT.D.LALITHA PRASAD

Counsel for the Respondent No.: GP FOR CIVIL SUPPLIES

The Court made the following :

THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION NOs. 23107 of 2007 & 18093 of 2007

COMMON ORDER:
(per the Hon'ble Sri Justice K.C.Bhanu)

1. This is a reference made by a learned Single Judge in Writ Petition No.23107 of 2007, for an authoritative pronouncement to answer the question as to whether the seizure of 166 bags of rice (each 50 Kgs) belonging to the petitioner by the third respondent herein viz. Sub Inspector of police, Rural, Proddatur, Kadapa district, is legal or not.

2. Similarly, the learned Single Judge, in Writ Petition No.18097 of 2007, made reference on the ground that the view expressed by another Single Judge would require reconsideration.

3. Writ Petition No.23107 of 2007 is filed, *inter alia*, contending that the third respondent-Sub Inspector of Police, Rural, Proddatur, Kadapa district, has no jurisdiction and he misused the power in seizing the rice of petitioner; that by virtue of notification issued by the Government of India dated 15.02.2002 and further memo dated 27.3.2003 issued by the Government of Andhra Pradesh, there are no restrictions as regards to stock or transport of paddy and rice, and as such, the seizure is illegal and without jurisdiction. The allegation of the respondents is that the petitioner purchased 166 bags of rice meant for public from the dealer of Public Distribution System. It is alleged that on 24.5.2007, the third respondent raided the petitioner's premises bearing no.3/365 and seized the 166 bags of rice. The third respondent registered a case in crime no.58/2007 under Sections 406 of the Indian Penal Code and Section 7(1) of the Essential Commodities Act, 1955.

4. Whereas, Writ Petition No.18093 of 2007 is filed to declare the memo dated 19.7.2007 issued by the Joint Collector, West Godavari, directing the petitioner to

furnish bank guarantee for Rs.70,256/- for a period of 3 years from any Nationalised Bank, for considering release of the stocks seized, as illegal and arbitrary, and for consequential direction to the respondent no.2 to release the 70 quintals of rice to the petitioner without insisting upon bank guarantee.

5. The learned counsel for the petitioners contends that by virtue of notification dated 15.02.2002 issued by the Government of India, there are no restrictions as to stock or transport of paddy and rice; that if any person or dealer is indulging in purchase of rice meant for Food for Work or Public Distribution System, the only course left open to the authorities is to initiate proceedings under the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). In support of his contention, he placed strong reliance on a decision in *Sheela Srinivas v. District Collector, Karimnagar & another*[1].

6. On the other hand, the learned Government Pleader for Civil Supplies contended that the Andhra Pradesh Rice Procurement (Levy) Order, 1984 (for short, 'Levy Order, 1984'), is promulgated by the Governor of Andhra Pradesh with the prior concurrence of the Central Government, and clause 14 thereof, the Enforcement Officer is empowered to search and seize any essential commodity; that there are certain restrictions imposed by the Levy Order, 1984; that this

Order is on the Statute Book as on today; that the notification issued by the Government of India dated 15.02.2002 was subsequently amended, and so the notification which was relied upon by the petitioner would not affect the operation of the Levy Order issued by the State Government; therefore, the Enforcement Officer is authorized to search and seize any essential commodity, if there is any contravention; that the Levy Order, 1984 has not been brought to the notice of the Hon'ble Single Judge of this Court. Hence, he prayed to dismiss the Writ Petitions.

7. In view of the aforesaid rival contentions, the points for determination are -

i) Whether rice or paddy is an essential commodity requiring any licence or permit to stock or transport;

ii) Which authority is empowered or competent to search and seize the paddy or rice from any premises, in case of any violations of any provisions of law or the Levy Order, 1984 ?

8. In *Sheela Srinivas's* case (1 supra), a learned Single Judge of this Court held thus: (para 8).

> "Even assuming that the petitioner has purchased or has come into possession of rice meant for Food for Work, the only action to be taken in this regard is to initiate proceedings under the Criminal Procedure Code. The clarification issued by the Commissioner of Civil Supplies, through the recent proceedings dated 12.8.2002 is as under:
>
> 'With reference to the letter cited, it is clarified that Rice Millers who indulge in

> purchase of rice like Food for Work rice, action has to be taken under Criminal Procedure Code as there is no licencing system.
>
> Insofar as the Fair Price Shop dealdes are concerned, they are governed by the conditions of the authorization issued under the Andhra Pradesh State PDS Control Order, 2001.'
>
> Admittedly, the petitioner is not a fair price shop dealer. Therefore, the seizure effected cannot be sustained.

9. Another learned Single Judge of this Court in order dated 26.10.2005 in Writ Petition No.12151 of 2004, held that if that be so, as per the clarification issued by the Commissioner of Civil Supplies, vide proceedings dated 12.8.2002, even assuming that the petitioner had indulged in purchase of rice meant for Food for Work Programme, the only course open was to initiate criminal proceedings against him, since admittedly, there was no licensing system.

10. Similarly, in *Sri Sai Traders rep. by its Proprietor & others v. Assistant Supply Officer, Circle-I, Vijayawada & others*[2] case, another learned Single Judge of this Court held thus:

> "From a reading of the above, it would indicate that absolutely there is no restriction on movement of rice in the State of Andhra Pradesh and the authorities were supposed to take action against those cases of violation under the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order, 1966, but not by invoking the provisions of Section 6-A of the Act. Admittedly, in these two cases, the seizure was effected after 29.6.2005 i.e.

> much after rescinding the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order, 1966. Therefore, there is no scope for invoking Section 6-A of the Act against the seized goods of the petitioners. ..”

11. Similarly, another learned Single Judge of this Court in order dated 25.07.2007 in Writ Petition No.14903 of 2007, held thus:

> “On a perusal of the panchanama dated 30.5.2007 and the FIR in Cr.No.19/2007 of Halagunda P.S., it is clear that the seizure was effected only on the allegation that the rice which was meant for ‘food for work scheme’ was being transported illegally. It is not in dispute that the Government of India, New Delhi issued GSR 104(E) dated 15.2.2002 removing all restrictions on stocking and movement of paddy and rice in the State of Andhra Pradesh. Pursuant thereto, the Government of Andhra Pradesh has issued corresponding memo dated 27.3.2002. The effect of the said orders was subsequently clarified by the Commissioner of Civil Supplies, vide proceedings dated 12.8.2002 stating that in view of the change in law on the subject, even where a trader is found to have indulged in purchasing rice meant for ‘food for work scheme’, the only course open to the authorities is to initiate proceedings under the Code of Criminal Procedure.”

12. Before adverting to the reference to be answered in the two Writ Petitions, it is intrinsically necessary to refer to the provisions of the Essential Commodities Act, 1955 (for short, ‘the EC Act, 1955’) for better appreciation of the case. The EC Act, 1955, provides, in the interest of general public, for the control of

production, supply and distribution of trade and commerce in certain commodities, which have been declared as essential under the Act. To achieve these objectives, the Government of India has been vested with the powers under the Act to issue orders for regulating production, storage, transport and distribution of such essential commodities, and for controlling prices, etc. Section 3 of the EC Act empowers the Central Government, under the circumstances stated in that Section, to issue notified orders providing for the regulation of production, supply and distribution of any essential commodity. Under Section 5 of the EC Act, the Central Government can delegate its powers to State Government or Officer or an authority subordinate to it. Section 7 of the EC Act makes the contravention of any order made under Section 3 of the Act, criminally punishable. In exercise of the power under Section 5 of the EC Act, 1955, the Central Government issued notification on 24.7.1967 delegating to the State Governments, the power conferred upon it by Section 3 of the Act. Issue of any order by the State Governments under powers delegated in G.S.R. No.452(E), dated 25.10.1973 and G.S.R. No.800, dated 09.06.1978 issued by the Government of India for regulating by licence, permit or otherwise the storage, transport, distribution, disposal, acquisition, use of consumption of any of the commodities viz.

wheat, paddy/rice, coarse grains, sugar, edible oil seeds and edible oils, shall require the prior concurrence of the Central Government. In exercise of such powers, the State of Andhra Pradesh promulgated the Levy Order, 1984 on 25.1.1984. The said order was admittedly promulgated with the prior concurrence of the Central Government. It is true that the power conferred by Section 3(1) of the Act, 1955 can be exercised by the Central Government or its delegate, only if it is of the opinion that it is necessary or expedient to provide for the regulation of any essential commodity.

13. Now, it has to be seen whether rice and paddy can be termed as 'essential commodities' because in *Sri Sai Traders* case (2 supra), it was held that 'rice' was taken out of the EC Act, 1955 by way of an order passed by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi in G.S.R. 104(E), dated 15.2.2002, issued in exercise of the powers conferred under Section 3 of the Act, 1955. It is further held that rice is one of the scheduled commodities, though not an essential commodity, under the Control Orders. Classes of certain commodities, which come under the purview of 'essential commodity', have been delineated in clause (a) of Section 2 of the EC Act, 1955. Sub-clause (v) of the above provision is relevant to answer the reference of this case, whereunder 'food stuff' is one of the classes of

commodities come within the meaning of the 'essential commodity'.

14. 'Food stuff' is defined in a decision in *M/s. Sat Pal Gupta & another v. State of Haryana & others,* [3] wherein it is held thus: (para 6)

> "By 'foodstuffs' is meant food of any kind. The Shorter Oxford English Dictionary (Third Edition) says that, 'food' is 'what one takes into the system to maintain life and growth'. According to Webster's Third New International Dictionary, 'food' means 'material consisting of carbohydrates, fats, proteins and supplementary substances, that is taken or absorbed into the body of an organism in order to sustain growth, repair and all vital processes and to furnish energy for all activity of the organism; something that nourishes or develops or sustains". These dictionary meanings of the word 'food' are not restricted to what is eaten by human beings for nourishment and sustenance. According to them, what one takes into the system to maintain life and growth or what is taken into the body of an organism in order to sustain growth, is food."

15. I n *Welcome Hotel & others v. State of Andhra Pradesh & others* [4] case, the Apex Court held thus:

> ".. Cl. (a) of Section 2 defines 'essential commodity' to mean any of the items which include ... (v) foodstuffs, including edible oilseeds and oils. The submission is that the expression 'foodstuffs' in its etymological and grammatical sense would mean raw foodstuffs or appropriately called foodgrains such as wehat, rice, jawar, bazra, maize, etc. but not cooked food which is a

> perishable commodity. We see no justification for giving a restricted meaning to the expression 'foodstuffs'. If power to control prices of raw foodstuffs such as rice or wheat is conferred by Section 3, we see no justification for that power not comprehending within its fold the power to regulate prices of articles made out of such raw foodstuffs. Expression such as 'foodcrops', 'spices' and 'condiments' indicates different species of articles of food but the general expression 'foodstuffs' was interpreted to include spices and condiments also."

From the above decisions, it is clear that raw food material come within the meaning of foodstuff. Similarly, the articles derived from the raw food, can be termed as 'foodstuff'. There cannot be any dispute that rice, after cooking, is meant for human consumption and therefore, it can be stated to be a 'foodstuff'. Similarly, paddy is a food crop, which is a raw product of rice, and therefore, it can also be termed as 'food stuff' within the meaning of Section 2(a)(v) of the EC Act, 1955. Therefore, paddy or rice is an essential commodity.

16. The object and scheme of Levy Order, 1984 is for maintaining the supplies of paddy and rice, for securing its equitable distribution and availability at fair price. The Constitutionality or vires of the Levy Order, 1984 is not under challenge before this Court. Unless and until it is repealed, varied or modified, the said Order would operate the field of maintaining supplies of rice and for equitable distribution and availability at fair price,

within the State of Andhra Pradesh. As per the said Levy Order, 1984, 'paddy' and 'rice' means paddy and rice of the varieties described in Schedule I and Schedule II respectively.

17. Clause '3' of the Levy Order, 1984 deals with regard to miller selling of rice to Food Corporation or State Corporation at procurement price seventy five percentage of total quantity of certain varieties of rice. Clause '4' deals with regard to selling of rice to Food Corporation/State Corporation by every dealer. Clause '6' deals with delivery of rice by miller or dealer to the Food Corporation. Clause '7' puts restriction on the miller or dealer to sell or agree to sell or otherwise dispose of rice recovered by milling, other than the quantity specified in clause '3' or '4', except in accordance with the Release Certificate issued by the Collector in this behalf. Clause '8' deals with issuance of Release Certificate to every miller and dealer by competent authority. Clause '14' deals with powers of Enforcement Officer to enter, search and seize any stock of rice or paddy or broken rice, from the mill or other premises of the miller or dealer, when he has reason to believe that contravention of any of the provisions under this Order has been committed. Under clause '15', provisions of Cr.P.C. relating to search and seizure shall apply, so far as may be, to searches and seizures under

clause ‘14’. Clause ‘16’ deals with maintenance of accounts by miller or dealer.

18. ‘Dealer’ is defined under clause 2(d) of the Levy Order, 1984, which means a person, who is engaged in the business of purchase, store and sale of paddy or rice or both. ‘Enforcement Officer’ is defined under clause 2(e) of the Levy Order, 1984, which means:

> “Any officer of the Revenue Department not below the rank of Deputy Tahsildar or any officer of the Civil Supplies Department not below the rank of a Food Inspector or Upper Division Cadre appointed as such by the Collector concerned and any officer authorized in this behalf by the State Government not below the rank of a Sub Inspector of Police (of the Vigilance Cell of the Civil Supplies Department) and any officer authorized in this behalf by the State Government and not below the rank of a Sub Inspector of Police.”

19. As seen from the definition of ‘dealer’, it is clear that any person, who is engaged in the business of purchase, store and sale of paddy or rice or both, is a ‘dealer’. Even an agriculturist, who produces paddy for the purpose of sale, can be termed as ‘dealer’ within the meaning of clause 2(d) of the Levy Order, 1984. Similarly, an ‘Enforcement Officer’ as defined would mean, an officer not below the rank of the Deputy Tahsildar in Revenue Department, and an officer, not below the rank of Food Inspector in Civil Supplies Department, and an officer not below the rank of Sub Inspector of Vigilance Cell of Civil Supplies Department,

or any other officer authorized by the State Government not below the rank of Sub Inspector of Police. So far as the Levy Order, 1984 is on the Statute Book, an Enforcement Officer can search and seize paddy, rice or broken rice, but the only prerequisite condition is that such officer has to follow the procedure contemplated under Cr.P.C. relating to the search and seizure.

20. The learned counsel for the petitioners placed strong reliance on the order issued by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi in G.S.R. 104(E), dated 15.2.2002, which may be called as 'Removal of (Licensing requirements, Stock limits and Movement Restrictions) on Specified Foodstuffs Order, 2002 (for short, 'the Foodstuffs Order, 2002'). The said order was issued in exercise of powers conferred under Section 3 of the Act, 1955, for securing availability of commodities specified in the Order at fair prices through out the country. The learned counsel for the petitioners mainly relied upon clause '3' of the Food Stuff Order, 2002, which reads that with the coming into effect of the said Order, any dealer may freely buy, sell, stock, sell, transport, distribute, dispose, acquire, use or consume any quantity of wheat, paddy/rice, coarse grains, sugar, edible oil seeds and edible oils and shall not require a **permit or licence** therefor under any order issued

under the Act, 1955. The aforementioned clause would clearly contemplate that no permit or licence for the essential commodities is required for the purposes as mentioned therein. The said clause in its sweep in regard to the orders issued by the State Governments or Central Government, under the Act, 1955, totally eliminates the permit or licence system in respect of the essential commodities mentioned therein for the purpose of buying, stocking, selling, transporting, distributing, etc. But, this provision does not take away the various other aspects under the Levy Order, 1984, except to the limited extent of taking away the permit or licence system in transporting or storage of the essential commodities mentioned therein. Foodstuff Order, 2002 does not take away, expressly or by necessary implication, the powers of the Enforcement Officer as depicted under the Levy Order, 2002.

21. Clause 5 of the Foodstuffs Order, 2002, contemplates that issue of any orders by the State Governments for regulating licences, permit or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any of the commodities specified in clause 3, shall require the prior concurrence of the Central Government. By virtue of the said provision, a person cannot be prosecuted under the Act, 1955, or violation of any Control Order for not taking a licence or permit for transporting or storing,

etc. of paddy and rice. But, that does not mean that a dealer can carry on business of illegal possession, storage or transport of rice. When a dealer is authorized to do business legally, then only the permit or licence for carrying on business of rice or paddy is not required with effect from 15.2.2002.

Clause '6' of the Foodstuffs Order, 2002 reads that nothing contained in the said Order shall affect the operation of the Public Distribution System (Control) Order, 2001 issued by the Central Government and orders of the State Governments issued in pursuance thereof.

22. Again, the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi made an Order in G.S.R. 490(E), dated 16.6.2003, which may be called as 'Removal of (Licensing requirements, Stock limits and Movement Restrictions) on Specified Foodstuffs (Amendment) Order, 2003 (for short, 'the Foodstuffs (Amendment) Order, 2003'), whereunder clause '7' has been inserted to Foodstuffs Order, 2002. The said clause reads thus:

> "Nothing contained in this Order shall affect the operation of the levy orders issued by the State Governments for the purpose of procurement of rice as levy from the millers or dealers of paddy or rice in pursuance of the powers delegated to the State Governments by the Central Government under section 3 of the Essential Commodities Act, 1955."

By insertion of this clause, the State Governments

can issue orders for the purpose of procurement of rice as levy from the millers or dealers. If these two orders viz. the Foodstuffs Order, 2002 and the Foodstuffs (Amendment) Order, 2003, are read in a juxta position, as they have got to be, it can be safely said that only from 15.2.2002 to 16.6.2003, there was no requirement of licence or permit for a dealer for storage, transport, sale, etc. of rice and paddy.

23. No order promulgated by the State of Andhra Pradesh or by the Government of India, exercising the powers under Section 3 of the Act, 1955, is brought to the notice of this Court, suspending, superceding, modifying or impliedly repealing the Levy Order, 1984. It is also pertinent to refer to the decision, dated 02.01.2006, of a Division Bench of this Court in Writ Appeal No.2472 of 2005 in *Sri Venkata Madhavi Rice & Flour Mill v. The District Collector, Prakasam District, Ongole* case, wherein a similar question arose with regard to release of seized stocks of rice on furnishing of bank guarantee. It is held in the decision as follows:

> "In our view, the Levy Order is very much in force and the appellant was duty bound to make its contribution of levy rice, which was admittedly not done. In the premise aforesaid, we do not find any valid ground to interfere with what we have described as an extremely compassionate order passed by the learned Single Judge."

In the said case, proceedings were initiated under Section 6A of the Act, 1955 against the appellant

therein on the charge of violating the provisions contained in the Andhra Pradesh Rice Procurement (Levy) Order, 1984. It is clearly observed that the Levy Order, 1984 is very much in force. Such is the case, the Enforcement Officer can enter any premises, search the same and seize the rice or paddy, if found in contravention of the Levy Order, 1984. Promulgation and existence of the Levy Order, 1984 was admittedly not brought to the notice of any one of the learned Single Judges of this Court, while dealing with regard to issue to be resolved or adjudicated in the aforesaid mentioned Writ Petitions.

24. It is also one of the contentions raised by the learned counsel for the petitioners that the Police Officer is not competent to search and seize the rice and paddy found in the premises of Writ Petitioners. On this aspect, it is important and relevant to refer to Section 165(1) Cr.P.C. reads as follows:

> "Whenever an officer-in-charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for

such thing in any place within the limits of such station."

Therefore, the above provision makes it clear that the officer-in-charge of the police station or a police officer making investigation, after recording in writing the grounds of his belief, can search a thing. Under sub-section (7) of Section 100 Cr.P.C., list of all things taken possession of, shall be prepared and a copy thereof shall be delivered to such person. Therefore, the above provisions make it clear that though not under the Levy Order, 1984, an officer-in-charge of a police station or a police officer making investigation, can conduct search of any premises and seize the things during course of investigation under general penal laws. But, when an officer not below the rank of Sub Inspector of Police, is to exercise the jurisdiction under the Levy Order, 1984, necessarily he must be empowered to do so by the order of the State Government. If the State Government issued any orders empowering the officer not below the rank of Sub Inspector of Police, he can also exercise the powers under clause '14' of the Levy Order, 1984. There is absolutely no bar for a police officer investigating a case under general laws, to enter into premises to conduct search and seizure of rice and paddy.

25. It is one of the contentions raised by the learned counsel for the petitioners that when a search itself is

illegal, asking the petitioner to give bank guarantee for releasing of custody of the rice/paddy, is unwarranted, and the same does not arise. With regard to first question, we have already answered that the Enforcement Officer is empowered to search a premises and seize rice and paddy, if he is of the opinion that there was a contravention of the provisions of the Levy Order, 1984. Similarly, the Station House Officer, who is conducting investigation under the general provisions of law, can also search a premises and effect seizure during the course of investigation if he has reason to do so. When any contravention is made in pursuance of an Order made under Section 3 of the Act, 1955, power is conferred upon the competent authority under Section 6-A of the Act, 1955 for confiscation of the essential commodity seized. When a power is to be conferred upon a Collector for confiscation, power of granting interim custody is an incidental power. When such incidental power is exercised by the Collector for grant of interim custody, necessarily he has to do so by taking security for the value of the property. When an essential commodity is liable for confiscation, in such a case, the competent authority can insist for furnishing of a bank guarantee while releasing the stocks for interim custody, to safe guard the interests of the State. Therefore, the order to furnish the bank guarantee for the purpose of release of the essential commodity, made

by the first respondent in Writ Petition No.18093 of 1997, cannot be said to be illegal.

26. The learned counsel for the petitioners relied on the decision in *Sri Sai Traders* case (2 supra), wherein it is held that in pursuance of G.O. Ms. No.79, dated 29.6.2004, rescinding the Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order, 1966, there is no restriction on movement of rice in the State of Andhra Pradesh. The scheme of the said Order is completely in contrast with the object of the Levy Order, 1984. The Andhra Pradesh Paddy and Rice (Requisitioning of Stocks) Order, 1966 deals with a situation where declaration has to be given by an agriculturist who is having land of Ac.10.00 or more, and who is in the possession of 100 quintals of paddy and rice, and 50% of the stock produced by the agriculturist shall be sold to the State Government. The said Order was duly rescinded by the Government of Andhra Pradesh in G.O. Ms. No.79, dated 29.6.2004. Further, every stockholder or agriculturist shall sell rice or paddy to State Government such quantities as prescribed. Even otherwise, the Order, 1966 does not deal with storage, transport of paddy or rice by a dealer. Therefore, the said Order has no application in respect of storage, transport of paddy or rice by a dealer.

27. The learned counsel for the petitioners relied on

the clarification issued by the Commissioner of Civil Supplies vide proceedings in CCS Ref. No. PDS/II(3)/1240/2002, dated 12.8.2002 wherein it is stated that where a trader is found to have indulged in purchase of rice meant for food for work scheme, the only course left for the authorities is to initiate proceedings under Code of Criminal Procedure, 1973.

We have no hesitation to hold that the proceedings in CCS Ref. No. PDS/II(3)/1240/2002, dated 12.8.2002 issued by the Commissioner of Civil Supplies, Hyderabad, is contrary to the provisions of the Levy Order, 1984.

28. In view of the foregoing discussion, we answer the reference with the following findings.

a) The Andhra Pradesh Rice Procurement (Levy) Order, 1984 is in force;

b) 'Rice' and 'paddy' are essential commodities within the meaning of Section 2(a)(v) of the Essential Commodities Act, 1955;

c) The Officer-in-charge of a police station or a Police Officer making investigation under the Code of Criminal Procedure, 1973, can search a premises and seize any essential commodity in any place within the limits of his jurisdiction, under general penal laws;

d) Any officer, within the meaning of Section 2(e) of the Andhra Pradesh Rice Procurement (Levy) Order, 1984 can search and seize rice or paddy or broken rice, including animal, vehicle, vessel or conveyance used for carrying the stock of rice or paddy or broken rice, if he

is of the *prima facie* opinion that a dealer contravened any of the provisions of the said Order.

e) The clarification proceedings in CCS Ref. No.PDS/II(3)/1240/2002, issued by the Commissioner of Civil Supplies, Hyderabad, dated 12.8.2002 is contrary to the provisions of the Andhra Pradesh Rice Procurement (Levy) Order, 1984;

f) A dealer or miller or purchaser of paddy or any person, contravening the provisions of the Andhra Pradesh Rice Procurement (Levy) Order, 1984, is liable to be prosecuted under the provisions of the Essential Commodities Act, 1955.

29. As the references answered would squarely cover the points to be adjudicated in the Writ Petitions, we deem it not fit to send back the Writ Petitions to the learned Single Judge. Therefore, both the Writ Petitions are liable to be dismissed. It is needless to observe that the concerned authority shall proceed with the case in accordance with law.

30. The Writ Petitions are, accordingly, dismissed. No costs.

JUSTICE D.S.R.VARMA

JUSTICE K.C.BHANU

.08.2008.

DRK

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***THE HONOURABLE SRI JUSTICE D.S.R. VARMA**
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

+ WRIT PETITION NOs. 23107 of 2007 & 18093 of 2007

%22-08-2008

#Elluru Chandra Obul Reddy

....**Petitioner**

Vs.

$ The Joint Collector, Kadapa & others

....Respondents

!Counsel for the Appellant: S.Lakshmi Narayana Reddy

^Counsel for the Respondent: G.P. for Civil Supplies

<Gist :

>Head Note:

? Cases referred:
1.2002(6) ALD 585
2.2006(4) ALT 758
3.AIR 1982 SC 798
4.AIR 1983 SC 1015

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[1] 2002(6) ALD 585

[2] 2006(4) ALT 758
[3] AIR 1982 SC 798
[4] AIR 1983 Supreme Court 1015